

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of High-Cost Universal)
Service Support Federal-State Joint)
Board on Universal Service.) WC Docket No. 05-337
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COMMENTS OF THE NEBRASKA PUBLIC SERVICE COMMISSION

SUMMARY

The Nebraska Public Service Commission (NPSC) supports the Federal Communications Commission's (Commission's) efforts to move quickly to reform the high-cost universal service fund (USF). The USF is growing out of control and major change aimed at limiting the growth of the fund balance needs to be implemented. The Commission must take immediate action to limit the number of ETCs supported in a given high-cost area to protect the public interest. States must be required to play a role in easing the burden on the USF. The Commission should reform the cost mechanism by eliminating the portability or "identical support" rule. Competitive ETCs should receive funding based on their own cost of providing service. The NPSC supports the concept of reverse auctions in general terms where the determination of cost is difficult. The NPSC strongly endorses the use of GIS technology and disaggregation methods to target high-cost areas. Finally, the NPSC recommends the inclusion of broadband in the definition of supported service for universal service purposes.

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INTRODUCTION

These comments are filed in response to the Commission's Public Notice issued May 1, 2007 in the above captioned docket seeking comment on various proposals to reform the high-cost universal service support mechanisms and the Recommended Decision released by the Federal-State Joint Board on Universal Service (Joint Board).¹ The Nebraska Public Service Commission (NPSC) offers comments regarding the various proposals including (1) the use of reverse auctions to determine high-cost universal service support; (2) the use of GIS technology and network cost modeling to better calculate and target support at a more granular level; (3) disaggregation of support; (4) the methodology for calculating support for competitive eligible telecommunications carriers (ETCs); and (5) whether universal service funding should be used to promote broadband deployment.

DISCUSSION

Universal service is an evolving level of telecommunications to be made available to all consumers in the U.S. regardless of location.² Supporting multiple networks using the same technology, and porting support to each ETC based upon the

¹ *Federal-State Joint Board on Universal Service Seeks Comment on Long Term, Comprehensive High-Cost Universal Service Reform*, WC Docket No. 05-337, CC Docket No. 96-45 (May 1, 2007) ("Public Notice"); *In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service Notice of Proposed Rulemaking*, WC Docket No. 05-337, CC Docket No. 96-45 (May 14, 2007) ("Recommended Decision").

² See 47 U.S.C. § 254.

incumbent carrier's costs, however, has caused the level of the fund to grow uncontrollably. The Joint Board has offered a number of credible proposals which if implemented correctly may help control the growth in the federal fund. The Joint Board has also offered an interim solution, capping support to competitive ETCs until a recommendation on comprehensive reform can be made. The Commission has sought comment on the interim cap proposal in a separate Notice of Proposed Rulemaking (NPRM). Accordingly, the NPSC will reserve comment on the interim cap at this time and comment on the four proposals aimed at a long term solution. The NPSC would offer the following comments regarding the proposed reforms.

Reverse Auctions

The Commission seeks comment on the use of reverse auctions to determine high-cost universal service support.³ The Commission recently observed that reverse auctions may be used to restrain the growth in the federal fund.⁴ Generally speaking, the NPSC would support the use of reverse auctions in areas in which accurately determining the cost of service is more difficult. In such areas, reverse auctions could serve as a least cost surrogate in the place of actual cost. Verizon, CTIA and Alltel presented proposals to the Commission at its en banc hearing.⁵ The NPSC is not going to endorse the merits of any specific proposal filed in this proceeding. However, the

³ See *Public Notice* para. 4.

⁴ *Ibid*

⁵ See *Federal-State Joint Board on Universal Service to Hold En Banc Hearing on High-Cost Universal Service Support in Areas Served by Rural Carriers*, WC Docket No. 05-337, Public Notice, 22 FCC Rcd 2545 (2007); and http://www.fcc.gov/wcb/tapd/universal_service/JointBoard/welcome.html.

NPSC believes the Commission must entertain certain requirements when implementing any reverse auction proposal.

First, the winning bidder should be required to serve the entire designated service area. If there is no requirement to demonstrate its ability to serve all consumers in a designated area prior to bidding in the reverse auction process, the Commission should establish a timeframe to determine when the winning carrier must provide service throughout the designated area.

Second, the winning company should also be subject to carrier of last resort obligations. The service should be provided over the carrier's own facilities. Also, the designated ETC in that area should not be permitted to exit the market without having a procedure in place to make sure the customers have comparable service with another carrier offering the same or similar technology at comparable rates. The Commission should also consider network access requirements.

Finally, the bidding carrier should be required to demonstrate that the quality of service provided in the designated area is reasonably comparable with service provided in urban areas. The carrier should also demonstrate that the service will be provided at comparable rates. The Commission must not lose sight of its statutory obligation to ensure that quality services are available at just and reasonable rates and that consumers in all regions have access to services that are reasonably comparable to the services provided in urban areas.⁶ To that end, certain minimal service quality requirements must be used by the Commission as a threshold for bidding and for continued ETC designation status

⁶ 47 U.S.C. § 254.

In the areas where accurate cost information is available, the use of reverse auctions would not be appropriate. The NPSC would recommend the use of specific cost information and, as discussed below, would recommend limiting the number of ETCs receiving support for the same area.

GIS Technology and Network Cost Modeling

The Commission also seeks comment on GIS Technology and Network Cost Modeling. Significant improvements have been made since the Commission adopted its cost model. GIS technology is effective and efficient means to identify areas which need USF support. Utilizing GIS data already available, such as locations of roads and urban centers, wireless tower location, topography, and population density provides a more complete picture of the marketplace. The NPSC endorses the notion of targeting high-cost support at a more granular level, i.e. the sub wire-center level. These tools can be used to identify the most costly areas to provide service and the Commission could then develop a distribution model to target support to those areas. The use of GIS technology would also be helpful in identifying those areas in which reverse auctions would be most appropriate.

GIS data and the formula used by the Commission must be made available to the pertinent state commission as well. State commissions should also be involved in determining specific cost issues. Each state may have unique high-cost characteristics. Thus, states should have the opportunity to assess those cost characteristics and participate in the Commission's process for determining state support. The Commission must partner with state commissions to determine unique cost issues relevant to their

state and should look to state commissions for assistance with the distribution mechanism.⁷

Disaggregation of Support

The NPSC believes that all carriers should be required to disaggregate support below the study area or wire center level and that disaggregation would work well in conjunction with the use of GIS technology in identifying high cost areas. In 2004, the NPSC adopted a long term funding mechanism for high-cost support which uses household density to determine where state universal service support is needed most.⁸ The NPSC determined that there were vast differences in cost characteristics between in-town and out-of-town areas. Accordingly, the NPSC separated each telephone exchange into in-town and out-of-town support areas using U.S. Census information.⁹ More recently, the NPSC entered an order¹⁰ proposing a method in order to further disaggregate ported unbundled network element support to competitive carriers providing service in rural and urban areas by suggesting the use of four or six geographically deaveraged zones based on in-town and out-of-town areas.

⁷ As far as the distribution mechanism is concerned, the Commission should consider benchmarking the rates, providing an incentive for states to provide appropriate high-cost funding, and should take into consideration the consumers who have paid into state high-cost mechanisms.

⁸ See *In the Matter of the Nebraska Public Service Commission, on its own Motion, Seeking to Establish a Long Term Universal Service Fund Mechanism*, NUSF-26, Conclusions and Findings (November 3, 2004)(“NUSF-26 Findings and Conclusions Order”).

⁹ See *Recommendations for a Permanent Universal Service Support Mechanism*, Tyler E. Frost and David I. Rosenbaum, The NRRI Journal of Applied Regulation, volume 3 (December 2005) at 31.

¹⁰ See generally, *In the Matter of the Nebraska Public Service Commission, on its own motion, to Make Adjustments to the Universal Service Fund Mechanism Established in NUSF-26*, Docket No. NUSF-50/C-3554.

Disaggregation will provide more targeted support that more accurately reflects the costs of providing service to a given region. Disaggregation should be mandatory for all carriers. Allowing carriers to opt out would allow carriers to maximize the amount of support they receive without relation to the true cost of service to a given area. Optional disaggregation may potentially lead to an increase in the burden on the fund as carriers will only disaggregate in those situations in which their support would increase; and carriers whose support would decrease have no incentive to disaggregate.

Providing more targeted support will provide greater flexibility in the future as emerging technology develops, efficiencies increase, and the costs of providing service to specific areas change. The NPSC would encourage the Commission to require carriers to disaggregate costs for at least two cost zones per wire center. Zones with similar costs characteristics could be aggregated together to reduce the number of total zones without introducing implicit subsidies. In its disaggregation formula, the Commission should look to density as a significant cost driver. The Commission should recognize that rural does not necessarily mean high-cost since there are in-town areas within traditionally considered rural areas which may not need high-cost support. The Commission should also recognize the differences in cost characteristics between in-town areas versus out-of-town areas and should group support areas accordingly. The Commission should not group areas with vastly different cost characteristics as doing so will create incentives for carriers to target a particular market based on the amount of universal service support given. A more accurate measure of cost would result if the Commission considers in-town and out-of-town separately.

Carriers should continue to receive support on a per line basis under a disaggregation plan. Any disaggregation plan should be reviewed and approved by the Commission.

Methodology for Calculating Competitive ETC Support

To bring the size of the federal fund under control, the Commission must support only one wireline network and one wireless network at a time with equal access provided for other carriers. We recognize that in the context of wireless networking, technological barriers to collocation may exist in some circumstances. However, eliminating funding for duplicative networks represents the most efficient use of universal service funds.

First, the universal service program should not be used to artificially create competition where market forces alone would not normally result in a competitive environment. Artificially creating competition through universal service support will continue to throw the federal fund balance out of control.

Second, funding multiple networks does not serve the public interest. The Commission's policies should ensure that all consumers have comparable access to services at similar and affordable rates. It does not make sense to spend millions of dollars on multiple ETCs using the same network technology in a number of high-cost areas which are declining in population. For example, Appendix A attached to these comments represents population change in Nebraska counties between 1990-2000 and

2000-2006.¹¹ The Commission should not be providing high-cost support to two or three wireless or wireline ETC networks in high-cost areas where the population is steadily declining. The Commission should ensure that there is one ETC per network technology which can serve the entire high-cost area at a rate which is comparable to the urban areas.

In 2004, the NPSC concluded after extensive hearings that its state universal service fund should not support multiple networks in a given area.¹² The NPSC concluded that providing NUSF support to multiple ETC networks was not in the public interest.¹³ The NPSC staff performed an economic analysis to determine the effect of supporting multiple networks in a universal service environment with limited financial resources.¹⁴ The NPSC adopted the staff analysis finding that supporting multiple networks ultimately may result in a provider's failure to recover a portion of its fixed cost. Such providers in the long run have three options: to increase retail rates, increase the amount of high-cost support received, or exit the market.¹⁵ None of these options benefit consumers. The same principle applies to the federal fund. Continuing to support multiple networks using the same technology will result in significant federal fund obligations or under-funding the various ETC networks. High-cost support must be limited to a single network per technology.

¹¹ David Drozd, Center for Public Affairs Research, University of Nebraska at Omaha, March 20, 2007.

¹² See NUSF-26 Findings and Conclusions Order para.15.

¹³ See *id.*; see also NUSF-26, Progression Order No. 5 (rel. June 29, 2004) Appendix B ("NUSF-26, Appendix B").

¹⁴ NUSF-26, Appendix B.

¹⁵ *Id.*

In addition, the support for each technology/network should be based on a carrier's own costs. If the Commission continues to support multiple networks in a given area, the identical support or "portability" rule adopted by the Commission in its First Report and Order¹⁶ must be abandoned. Wireless carriers should be required to demonstrate their own costs through a Commission approved cost methodology or the reverse auction process. While the portability rule was seen as an efficient manner to administer support, it does not accurately reflect the cost of service. Competitive neutrality does not require the Commission to make support equal between wireline and wireless carriers. Obviously, as discussed in the Recommended Decision, wireless carriers do not have the same regulatory burdens that are imposed on wireline carriers. Wireless providers do not have carrier of last resort obligations, do not have to provide equal access and are not subject to rate regulation. Different consideration should be given to a wireless carrier in determining the level of support it should receive. If the Commission should decide to impose certain obligations upon a wireless carrier receiving support through the use of reverse auction proceedings, then the cost of such obligations should be taken into consideration as well.

States who review ETC applications must also be required to take some responsibility for the size of the federal fund. Prior to the Commission's adoption of more rigorous ETC designation standards in March of 2005,¹⁷ states had little guidance as to how to determine whether public interest was served by grants of ETC

¹⁶ *Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order*, 12 FCC Rcd 8776, 8932-34, 8944-45 (1997); *see also* 47 C.F.R. § 54.307(a)(1).

¹⁷ *In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order*, FCC 05-46 (rel. Mar. 17, 2005).

designations. Still today, there are no incentives for states to help control the size of the federal fund.

The Commission must require that some or all of the federal high-cost funding be provided upon contingent or matching state funding. If all states provided matching funds, the burden on the federal fund would be lessened significantly. If the requirement for matching funds would force a state's contribution to far exceed the contribution of other states, the Commission may want to consider a cap and a mechanism where remaining funds would come from the federal program.

The NPSC was one of the first states to implement a state universal service fund as the 1996 Act envisioned. The NPSC set a residential benchmark rate of \$17.50 per month equalizing rates throughout the state. Carriers in Nebraska have been required to charge the benchmark in order to qualify for support. The NPSC also reduced and then capped intrastate access charges. Consumers in Nebraska and similarly situated states have paid the price for universal service benefits while other states have reaped the benefits universal service without contributing to ease the burden on the federal fund. If a state is going to receive universal service support, then the Commission must create an incentive for all states to contribute to universal service.

Funding of Broadband

The NPSC believes that broadband should be added to the list of supported services. Broadband technology is essential to education, public health and public safety and deployment of broadband is consistent with public interest convenience and

necessity.¹⁸ The Commission in conjunction with the Joint Board should determine whether adding broadband as a supported service meets the criteria in § 254(c)(1)(A). The Commission should recognize that the development of a ubiquitous broadband network will take significant time, but that funding should be provided in order to ensure that the most efficient technology is employed. Broadband support should be sufficiently targeted to provide high-cost support to areas where broadband deployment would least likely develop and where market forces alone will not result in the services being provided. The Commission should continue to review the list of supported services to ensure that it keeps pace with evolving technologies.

CONCLUSION

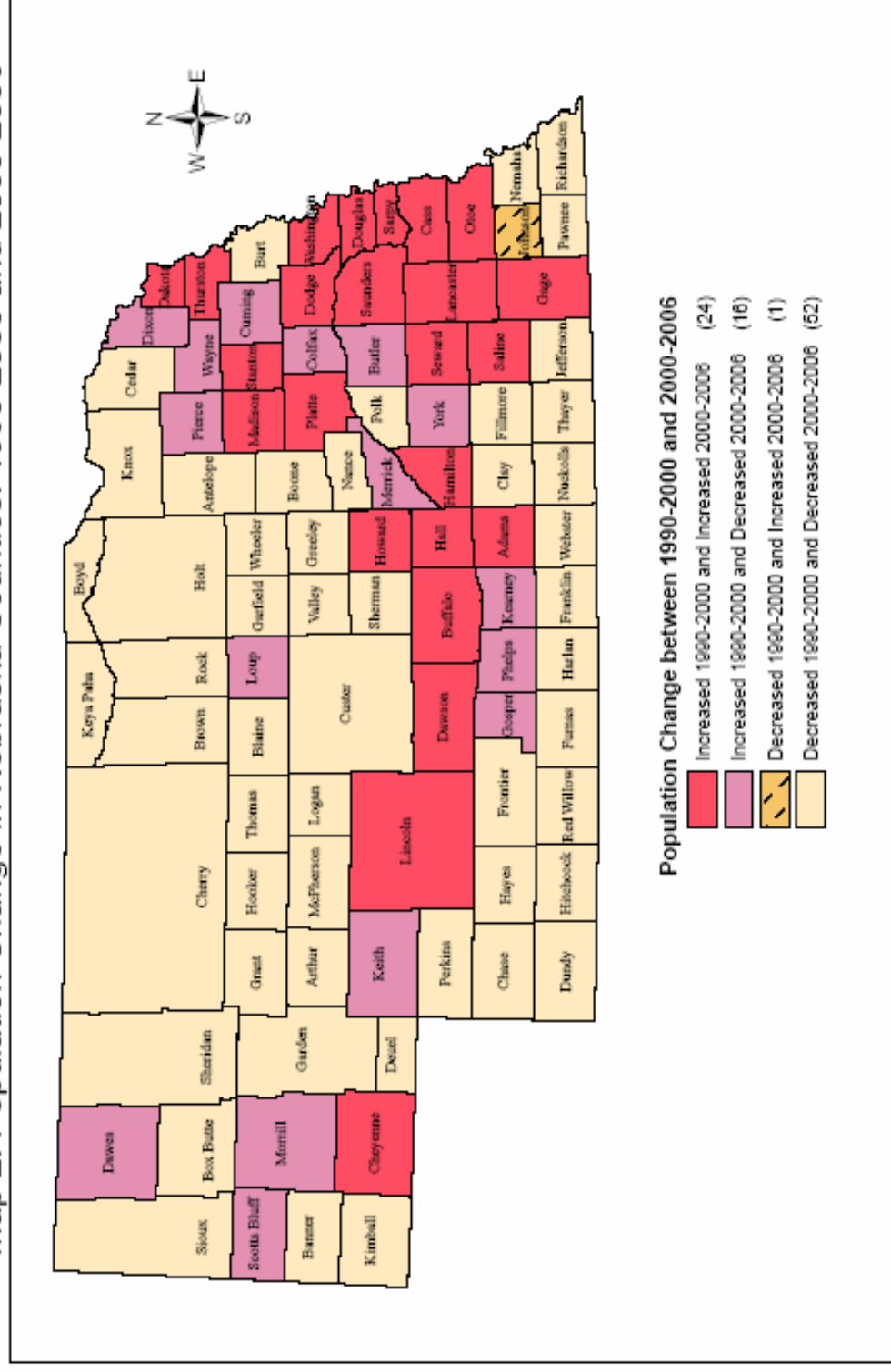
The Nebraska Public Service Commission supports the Commission's efforts in reforming the high-cost universal service support mechanisms. Each of the proposals provide methods for ensuring that the universal service funds available are used in the most efficient manner to specifically address high-cost areas. We would also encourage the Commission to consider including broadband within the definition of universal service in order to keep pace with developing technologies.

¹⁸ 47 U.S.C. § 254(c)(1)(A).

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Appendix A

Map 2: Population Change in Nebraska Counties: 1990-2000 and 2000-2006



Sources: 1990 and 2000 Decennial Censuses; Cumulative Estimates of Population Change - released March 20, 2007, U.S. Census Bureau
Prepared by: David Drozd, Center for Public Affairs Research, University of Nebraska at Omaha - March 20, 2007